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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re HemaSure Inc.

Sams

Serial No. 74/510,469

11/15

08 5-2197

Michael J. Bevilacqua of Hale and Door for HemaSure Inc.

Michael Hamilton, Senior Trademark Examining Attorney, Law
Office 105 (Thomas G. Howell, Managing Attorney).

Before Sams, Hairston and Walters, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

HemaSure Inc. has filed an application to register the
mark CELLWASHER for a "filter for removing excess fluids
from a blood supply."¹

Registration has been finally refused pursuant to
Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1),
on the ground that the mark is merely descriptive of the
identified goods. Specifically, the Senior Trademark
Examining Attorney maintains that the mark merely describes

¹ Application Serial No 74/510,469, filed April 6, 1994,
asserting a bona fide intention to use the mark in commerce.

Ser No. 74/510,469

the purpose or use of applicant's goods, namely, to wash or cleanse blood of excess fluids. Applicant has appealed.

Applicant and the Examining Attorney have filed briefs on the case, but no oral hearing was requested. We affirm the refusal to register.

In support of the refusal to register, the Examining Attorney submitted, inter alia, copies of four registrations and one abandoned application, along with over twenty excerpts of articles taken from the NEXIS data base. The Examining Attorney relies on the excerpts and the identification of goods in the registrations and application as evidence of the descriptive use of the terminology "cell washer" and "cell washing" in the fields of researching and/or processing blood or cells. For example, Registration No. 1,057,423 for the mark HARMONETICS covers, inter alia, "blood processing apparatus for laboratory use such as apparatus for washing blood cells, for fractionating blood and/or its components"; Registration No. 1,913,150 for the mark DADE covers, inter alia, "blood cell washing centrifuges"; and Registration No. 1,118,465 for a design mark covers, inter alia, "cell washing instruments."

The following are representative samples of the NEXIS excerpts (with **cell washer/cell washing** highlighted):

The Haemonetics Model 102 **Cell Washer** was evaluated for efficiency of leukocyte removal and erythrocyte recovery. Groups of 25 units of blood were washed using five different protocols, including the methods recommended by the manufacturer. ("Evaluation of erythrocyte washing using the the Haemonetics Model 102 **Cell Washer**", American Journal of Clinical Pathology; March 1981),

. . . cells (YRBC) with enhanced in vivo survival have been isolated, but the expense and donor time required with this technique prohibit its widespread use for patient support. We studied the use of the IBM 2991 **cell washer** (CW) to isolate YRBC ex vivo from previously collected donor blood. Age-dependent red cell separation could be achieved using this instrumentation. ("Ex vivo selective isolation of young red cells using the IBM-2991 **cell washer**", Blood, 1983);

In 33 cases (trauma, elective vascular, and cardiac procedures), we saved 80.7 L of blood with a **cell washer** blood recovery system (Cell Saver). In eight trauma cases, including three with intestinal perforation, **cell washing** salvaged 31.5 L of shed blood as a lifesaving emergency procedure.

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Additional washing with 10 L of saline did not remove significantly more bacteria (p greater than 0.20). Although emergency autotransfusion of blood contaminated with intestinal contents was lifesaving, we recommend caution since these results show that **cell washing** does not remove all bacteria.

("Emergency autotransfusion; partial cleansing of bacteria-laden blood by **cell washing**"; Journal of Trauma; January 1983);

. . . reinfusion of shed blood during periods of massive blood loss maintains hemodynamic stability, which is not possible with the more popular **cell washing** systems. This

capacity to reinfuse blood immediately is a significant benefit.

("Autotransfusion in Complex Aneurysms"; Surgery, Gynecology and Obstetrics; July 1984);

. . . enhancement of LAK cell numbers and maintenance of cytotoxicity, the Ficoll-Hypaque processing was eliminated, and a semiautomated blood **cell-washing** technique was used, employing the COBE-2991 **cell washer**. ("Phase I Study of High-Dose Continuous-Infusion Recombinant Interlukin-2 and Autologous Lymphokine-Activated Killer Cells"; Journal of the National Cancer Institute; September 1990); and

These processings are designed to minimize the loss of HSC while achieving an appropriate HSC product for the individual patient. A number of apheresis devices and **cell washers** simplify the enrichment of HSC in the harvested cell products. In contrast, tumor cell purging techniques are not standardized between the various transplant centers. ("Hematopoietic stem cell processing and cryopreservation", Journal of Clinical Apheresis, 1992).

In urging reversal of the refusal to register, applicant maintains that,

. . . the articles which have been cited by the Examining Attorney show that the term "cell washing" is used in connection with several different distinct processes other than washing or cleansing blood of unwanted constituents, which other processes include the removal of contaminants from blood and fractionation. Because the phrase has multiple meanings, it is ambiguous. Given this ambiguity, potential purchasers confronting Appellant's mark would not be able to immediately discern that that mark is used in connection with filters for removing excess fluids from a blood supply. Only through exposure to and investigation of

the goods themselves would potential purchasers understand the nature of these goods.
(Brief, p. 3)

A term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered merely descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In re Venture Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one who sees the mark alone can guess what the applicant's goods are, but rather in relation to the goods for which registration is sought, that is, by asking whether, when the mark is applied to the goods, it immediately conveys information about their nature. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979)

The above evidence persuades us that when the relevant consumers see CELLWASHER in connection with applicant's filter, they will readily understand that the filter washes

or cleanses excess fluids from a blood supply. Such consumers have been exposed to the use of the term "cell washer" to indicate a device or instrument which processes blood for various medical applications by "cell washing." Also, the evidence indicates that cell washing removes unwanted constituents, such as leukocytes or bacteria, from blood. Thus, it will require no degree of thought or imagination for the relevant class of consumers to immediately recognize that applicant's filter washes or cleanses excess fluids from blood.

Accordingly, we find that applicant's mark CELLWASHER, when applied to the identified goods, is merely descriptive of them.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.


J. B. Sams



P. T. Hairston



C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board